

THE SCOPE OF THE LAWYER'S PROFESSIONAL RESPONSIBILITY

VERN COUNTRYMAN*

In recent years there has been much talk in the legal profession about the lawyer's professional responsibility. Leaders of the profession have expressed concern that too many of our number do not understand, much less discharge, the responsibilities of the profession. This concern is not one nurtured solely in the ivory towers inhabited by law professors; it is shared by practicing lawyers, judges, and other members of the profession in public office. Indeed, if credit is to be allocated for stimulating concern in this area, the major portion must go to the practitioners rather than to the academicians.

In 1958 a Joint Conference on Professional Responsibility established by the American Bar Association and the Association of American Law Schools issued a final report in which it undertook to formulate a definition of the lawyer's professional responsibility.¹ Significantly, the report recognized responsibilities in the area of private service to the client and also in an area of public service, and included in the area of public service was a recognition of the lawyer's responsibility as a guardian of due process of law, his responsibility to make legal service available for all, his responsibility for representation of unpopular causes, his responsibility for leadership in legal reform, and his responsibility to retain independence of thought and action as a citizen. That statement was officially adopted by both of the organizations sponsoring the Conference.² Later in the same year the first Arden House Conference on Continuing Legal Education, sponsored by the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association, resolved that continuing legal education programs should in the future emphasize problems of professional responsibility to clients and to the public.³

* Professor of Law, Harvard Law School. I have drawn heavily upon a position paper, "Implementation of Education for Professional Responsibility," which my colleague, David R. Herwitz, and I prepared for the Second National Conference on the Continuing Education of the Bar, held at Arden House, December 14-17, 1963.

These remarks were delivered as the Arant Memorial Lecture at the Ohio State University College of Law on February 18, 1964.

¹ The Report has been published in 44 A.B.A.J. 1159 (1958) and 7 J. Pub. L. 462 (1958).

² 84 A.B.A. Rep. 541-42 (1959); A.A.L.S. Proceedings 33-34 (1958).

³ Joint Committee on Continuing Legal Education, Continuing Legal Education for Professional Competence and Responsibility 18 (1959). The second Arden House Conference reaffirmed that resolution. 32 L. Week 2307-08 (1963).

Meanwhile, the National Council on Legal Clinics, administering an 800,000 dollar grant from the Ford Foundation, has sponsored the preparation of three sets of teaching materials on professional responsibility⁴ as well as experimental projects devoted to the same end in fifteen different law schools.⁵ These projects range from internship programs with law and law-connected agencies through clinical work with individual problems to a pilot study in the comprehensive use of the pervasive approach in law school instruction for professional responsibility.⁶ None of these projects has yet progressed to the point where its product is available for study or evaluation, but significant contributions may be forthcoming within the next few years.

To any one who studies the record of this latter-day concern with professional responsibility, one point emerges clearly. Those who have addressed themselves to the problem do not proceed from any generally accepted definition of the scope of professional responsibility. That this should be so is understandable. The concept of professional responsibility must derive its content from the mores, the attitudes, the expectations of a given time and place. The responsibilities of a profession, whether conceived by its members or by others, are the product of the society of which the profession is a part. The concept of professional responsibility is, therefore, a continuously evolving one. Probably few would accept, as a comprehensive definition of the lawyer's professional responsibility today, what seemed to Sir Francis Bacon adequate nearly four centuries ago:

I hold every man a debtor to his profession; from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves by way of amends to be a help and ornament thereto. This is performed in some degree by the honest and liberal practice of a profession . . . but much more is this performed if a man be able to visit and strengthen the roots and foundation of the science itself . . .⁷

⁴ Schwartz, *Cases and Materials on Professional Responsibility and the Administration of Criminal Justice* (1961); Sacks, *Defending the Unpopular Client* (1961) and Countryman, *The Lawyer in Modern Society* (1962). See also A.A.L.S., *Selected Readings on the Legal Profession* (Boyer, Harno, Mathews & Bradway ed. 1962).

⁵ The first seven of the sponsored projects are described in the Council's publication, *Education for Professional Responsibility in the Law School—Preliminary Reports on Seven Experimental Projects* (1962). All are briefly summarized in Lam-born, *Legal Ethics and Professional Responsibility* 11-13 (1963).

⁶ See Smedley, "The Pervasive Approach on a Large Scale—"The Vanderbilt Experiment," 15 *J. Legal Ed.* 435 (1963).

⁷ Preface to Bacon, *Maxims of the Law* (1596).

Perhaps no comprehensive definition, designed to reach the outer limits, is either feasible or desirable. But current efforts to instill a greater sense of professional responsibility can hardly meet with measurable success unless a consensus can be reached among those making the effort on the main contours of the concept of that responsibility. While such a consensus can be reached only as the product of discussion and debate, the effort here will be to formulate the minimum ingredients of a modern concept of the lawyer's professional responsibility.

Included without elaboration or argument is the entire area of private responsibilities to the client—such matters as those relating to taking a case, the lawyer's control of the methods and tactics of solution, withdrawal from the case, conflict of interest, privileged communications, fees, and custody of clients' funds. This area, commonly embraced within the concept of "legal ethics," would no doubt be included in the most limited definition of professional responsibility. There is no dissent from Bacon's view that the lawyer must pursue the "honest and liberal practice" of his profession. Beyond this undisputed core of responsibility, we are brought to the areas of "public" responsibility, the primary focus of this article. A comprehensive definition of professional responsibility must recognize public responsibilities in at least six areas.

RESPONSIBILITIES TO LEGAL TRIBUNALS

That loyalty to the client's cause is to be tempered by some countervailing obligation to the legal tribunal to which the cause is presented is generally recognized. But the problem of resolving these competing demands is one of the most difficult the lawyer must face. Its solution may vary with the nature of the tribunal.

Courts

The Report of the Joint Conference on Professional Responsibility⁸ presents a reasoned defense of the advocate's role and the adversary process in terms of relieving the deciding tribunal from the obligation of framing the issues and presenting the evidence, so that it may "come to the hearing uncommitted." The late Judge Jerome Frank described the adversary system as a substitute for self-help designed principally to avoid "private pitched battles."⁹ The late Charles Curtis described it as an effort to "give the algebraic maximum of satisfaction to both parties."¹⁰ Differences in

⁸ *Supra* note 1.

⁹ Frank, *Courts on Trial* 5-7 (1950).

¹⁰ Curtis, *It's Your Law* 3 (1954).

conception may lead to different notions about the advocate's obligation to the court.

There seems to be a consensus that Samuel Williston was justified, as counsel for the defendant in a civil case, in withholding material evidence which plaintiff's counsel had failed to discover.¹¹ Are the obligations of the prosecuting attorney different? There is no agreement about an obligation to call the court's attention to adverse decisions.¹² And there seems to be little agreement with Curtis' suggestion that a lawyer's obligation to his client may on occasion require him to lie to the court.¹³

Legislatures

There are here two related but in some respects quite dissimilar areas in which the lawyer functions before the legislature. There is, first, the legislative hearing to which the lawyer may accompany his client or in which he may appear as a witness in behalf of his client. This is not the typical adversary proceeding of the courtroom. Adverse interests may or may not be represented. To the extent that they are not, are the lawyer's obligations of candor to the tribunal increased? The tribunal has not been freed of the burden of formulating issues and presenting evidence so that it may come to the hearing uncommitted. Since this is so, should the lawyer be allowed greater leeway in his efforts in his client's behalf? Canon 26, advising the lawyer to observe the "same principles of ethics which justify his appearance before the Courts" and to use no means "other than those addressed to the reason and understanding, to influence action," provides slight guidance.

Secondly, there is the lawyer's function as lobbyist. The term is here used in its neutral sense—excluding all connotations of bribery and corruption.¹⁴ Here, the lawyer for a private client is even further removed from the adversary proceeding in his *ex parte* contacts with legislators and their staffs and with administrative and executive offices whose positions may influence the legislation. What is the obligation of counsel to take account of unrepresented interests, not only in these contacts, but as he is given opportunity to participate in the drafting of bills, and in the writing of committee reports? If counsel for the legislature may properly resort to

¹¹ *Id.* at 17-20. See opinion No. 309 of the Committee on Professional Ethics of the New York County Lawyers' Association, in William Nelson Cromwell Foundation, *Opinions of Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyers' Association* 708 (1956).

¹² See *In re Greenberg*, 15 N.J. 132, 104 A.2d 46 (1954).

¹³ Curtis, *op. cit. supra* note 10, at 10-20. Cf. Drinker, "Some Remarks on Mr. Curtis' 'The Ethics of Advocacy,'" 4 *Stan. L. Rev.* 349 (1952).

¹⁴ See Horsky, *The Washington Lawyer* 33 (1962).

deliberate ambiguity in draftsmanship and to carefully placed evidence of legislative intent, as Dean Frank Newman of California has contended,¹⁵ what of counsel for the private client? Again, Canon 26 offers little help.

Administrative agencies

That part of the administrative process which is somewhat imprecisely described as "adjudication" would appear to involve problems similar to those of the lawyer who appears in court, save for the fact that the impropriety of the ex parte contact seems not to be nearly so well appreciated where administrative agencies are concerned. That part described as "rule-making" seems to present problems for the lawyer similar to those arising in the legislative process.

But there appear also to be exceptions in both instances. The requirement of separation of prosecuting and deciding functions and the prohibition against ex parte contacts in the federal Administrative Procedure Act do not apply to adjudications involving "licensing."¹⁶ And rule-making is broadly defined to include, *inter alia*, rate-making.¹⁷ Thus the lawyer may find himself in a licensing or rate-making procedure where adverse interests are not represented and where ex parte contacts with the administrative tribunal are not forbidden by law. It may be, as a House Committee has recently concluded, that counsel for an applicant in a pipeline licensing case, where the rate of return may also be fixed and where there are no competing applicants, does not violate the law by ex parte contacts with members of the licensing commission designed to affect their action on the application and the rate of return.¹⁸ But are questions of professional responsibility resolved by the Committee's conclusions that, since there were no competing applicants, the only interests affected by the ex parte contacts were those of the staff of the Commission, which also had ex parte contact with the Commission, or those of the Commission itself? Can one agree with the Committee that, "because of the nonexistence of any other party having an interest to be affected, the contacts, in the strictest sense of the term, may well be considered as not ex parte in the sense normally condemned"?¹⁹ Once more, Canon 26 is of little aid.

The questions raised are pertinent to responsibility to legal

¹⁵ Newman, "A Legal Look at Congress and the State Legislatures," in *Legal Institutions Today and Tomorrow* 67, 75-77 (Paulsen ed. 1959).

¹⁶ 60 Stat. 240 (1946), 5 U.S.C. § 1004(c) (1958).

¹⁷ 60 Stat. 237 (1946), 5 U.S.C. § 1001(c) (1958).

¹⁸ H.R. Rep. No. 2238, 86th Cong., 2d Sess. 19-24 (1961). Cf. *Sangamon Valley Television Corp. v. United States*, 269 F.2d 221 (D.C. Cir. 1959).

¹⁹ *Id.* at 24.

tribunals but it would be fruitless here to attempt to provide answers which would be generally acceptable. And the mere fact that this is so seems to be sufficient to demonstrate that there is a professional responsibility to seek a consensus on such problems.

RESPONSIBILITIES FOR LAW REFORM

The profession can claim a general competence on all attempts to solve man's problems by resort to law, and in a number of areas the profession, or some of its members, can claim a special competence. What obligations and what limitations arise from competence of either sort? A number of current examples are illustrative.

Procedure

The profession has already, by virtue of its special competence, made a substantial contribution to the reform of civil and administrative procedure. Similar reform may be overdue in other areas.

Edward Bennett Williams has recently complained that the defendant in a criminal proceeding does not under the federal Criminal Rules have available to him the discovery proceedings available to a defendant in a civil case.²⁰ If there is merit to the complaint, is there a professional responsibility not merely to lend technical aid in drafting necessary amendments to the Criminal Rules, but also to take the initiative and prepare and present the case for reform?

The federal Administrative Procedure Act's requirements for adjudication do not apply to selection and tenure of government employees.²¹ As a consequence the federal loyalty-security program operates without procedural safeguards which would be required in most other administrative proceedings. In 1956 a special committee of the Association of the Bar of the City of New York published a report which carefully reviewed the operation of this program and made specific recommendations for its improvement.²² These recommendations have been substantially ignored. Is there a professional responsibility to continue to seek reform in this area? The Committee which prepared the report thought there was:

Some may think it presumptuous for private citizens to take upon themselves the responsibility for proposing to our government far-reaching changes in this field. We deem it appropriate that members of the Bar should do this. Indeed, as we conceive it, our duty as lawyers requires us to do so. The Bar of the United

²⁰ Williams, *One Man's Freedom* 163-85 (1962).

²¹ 60 Stat. 239 (1946), 5 U.S.C. § 1004 (1958).

²² Report of the Special Committee on the Federal Loyalty-Security Program of the Association of the Bar of the City of New York (1956).

States has always been, and must always be, alert in the protection of the liberties on which our country was founded as well as of other measures essential to national security. It is so, in fact, with lawyers in every country where freedom exists or is emerging. It is only in the countries where freedom is rejected that the right and duty of the Bar to protect the liberties of the citizens are denied or suppressed.²³

No procedures of comparable importance in this country are less uniform and less formalized than those of legislative committees. In 1954 a special committee of the American Bar Association published a careful study of the procedures of Congressional investigating committees which found abuses of substance and of procedure constituting serious violations of the rights of citizens in some investigations. The report recommended that the American Bar Association endorse adoption by Congress of a uniform code of procedure for all investigating committees and carefully detailed the essentials of such a code.²⁴ No action has been taken on this recommendation. Is there a professional obligation to continue to press for reform here?

Personnel

The selection of the men who will exercise the powers of government is obviously of no less importance than the formulation of the laws they will enact or enforce. By reason of its familiarity with the operations of government and with those who operate it, the bar may claim a special competence in this area also. Opportunities for discharge of professional responsibility may currently exist in all three branches of government.

In 1937 the American Bar Association endorsed the essentials of the Missouri plan for selection and removal of judges as a substitute for direct election.²⁵ Since that time only six states have adopted such a plan for selection of some or all of their judges.²⁶ Admittedly, there is a serious obstacle in the abiding faith—not confined to laymen—in the elective process as a means of holding all public officials to public accountability. Certainly the faith is bolstered by the arrogance of an occasional federal or other life-tenure judge. And this faith persists although it is probably largely true, as Al Smith said, that the elective process “means the selection of judges by political leaders and the ratification of their selection

²³ *Id.* at 24-25.

²⁴ A.B.A. Special Committee on Individual Rights as Affected by National Security, Report on Congressional Investigations 35-40 (1954).

²⁵ 62 A.B.A. Rep. 893 (1937).

²⁶ American B. News, Nov. 15, 1962, p. 1.

by an electorate who are not really in a position to pass upon the legal and other abilities of the individual."²⁷

There are difficulties too in trying to demonstrate the superiority of the Missouri plan. The argument in its behalf seems to be entirely *a priori*. So far as I know, no empirical study has been made. Such a study would be difficult, but until it is done has the bar discharged its professional responsibility? Has it properly presented the case for the Missouri plan? Can it even be confident that it has selected the best plan?

Bar associations frequently consider it appropriate to express their views on the qualifications of candidates for judicial office. In 1949 the American Bar Association, through its Committee on the Federal Judiciary, established a procedure whereby it could express its views on the qualifications of prospective nominees to federal judgeships. Justification for this procedure rests upon the bar's special competence to judge the qualifications for the office and its special ability to obtain objective evaluations of the qualifications of prospective nominees, who are invariably lawyers. While the action taken by bar associations on such matters is occasionally dismaying, and it is arguable that those who profess to speak for the membership often do not do so and that it is wrong to formalize a procedure whereby their views become decisive, the claim to special competence seems sufficiently valid to justify the continued interest of bar associations in judicial appointments and elections. Indeed, a similar interest in at least some of the appointments and elections of administrative officials should be evinced as a facet of professional responsibility. The analogy cannot be pushed too far, but there are a variety of administrative offices encompassing adjudicatory functions where a claim to special professional competence could be made, at least where the prospective nominees are lawyers, as they frequently are. If the professional responsibility arises from the special competence, does it not to this extent carry over to administrative appointments also?

Now that *Baker v. Carr*²⁸ has opened the way for judicial examination of legislative apportionment under the equal protection clause, a host of difficult questions are presented. What standards are to be found in the equal protection clause? Should the same standards really apply to both houses of the state legislatures? How is the evidence to be collected and presented in order properly to explore such questions? In what states do existing apportionments seem to justify litigating these questions? How is this apparently

²⁷ Smith, *The Citizen and His Government* 86 (1935).

²⁸ 369 U.S. 186 (1962).

expensive sort of litigation to be financed? Here, again, the bar can properly claim a special competence to deal with such questions. Does this fact imply a professional responsibility to see that they are dealt with competently?

SUBSTANTIVE LAW

The reach should not exceed the capacity to perform, and some caution should be exercised in attempting to define the limits of professional responsibility in the area of substantive law reform. But here other areas of special competence can be identified, for example, tax reform and civil rights.

Few other than the tax specialist will claim familiarity with the intricacies of the Internal Revenue Code. Indeed, only a few lawyers will claim familiarity with so limited a feature of the Code as the ubiquitous federal tax lien.²⁹ The man with a tax problem, and his lawyer, will be seeking his version of tax reform. Hence it is, as Dean Griswold has said, that "we get hundreds of detailed, intricate provisions in our tax law, each of which is primarily the result of the fact that a person had a problem."³⁰ But unless we are willing to commit the public interest solely to the only other people knowledgeable in the area—the Internal Revenue Service and a few Congressmen—qualified members of the profession must recognize a public responsibility for tax reform.

When the Report of the Joint Conference on Professional Responsibility spoke of the lawyer as "a guardian of due process," it apparently was referring to procedural due process. But should the lawyer in a legal system committed to equality before the law be less a guardian of the equal protection clause and of the due process prohibition of arbitrary discrimination? When equality before the law manifestly does not obtain, is there no less a professional responsibility to seek reform than where the procedures of the law are unfair? At the very least, when Congress is considering the exercise of its authority to enact implementing legislation under the fourteenth amendment, is there not a professional responsibility to participate in the public deliberations?

The lawyer, in the full context of his professional role and in the full reach of his traditional function, is devoted to the peaceful solution of disputes. His experience reaches to disputes between individuals and groups, to their disputes with the state, and to

²⁹ See American Bar Association, "Report of the Special Committee on Federal Liens," 84 A.B.A. Rep. 645 (1959).

³⁰ Joint Committee on Continuing Legal Education, *op. cit. supra* note 3, at 136.

disputes between states. His training and his experience counsel that for all such disputes peaceful solutions may be found, no matter how irreconcilable the differences appear to be nor how intransigent the disputants. At least where disputes between nations are involved, there can be today few lawyers indeed who would even seriously consider counseling a resort to force as an alternative to submission to existing machinery for peaceful solution. The instances in the past where lawyers have joined with others in resorting to force instead only serve to emphasize the preferability of the peaceful solution.

Perhaps the lawyer's training and experience are transferable to the field of international relations. Perhaps in today's world, when mankind is threatened with extinction by any attempt at forcible solution of international disputes, the lawyer has some special endowments of inestimable value: a willingness to assume that any dispute is somehow susceptible to peaceful solution; an instinct, or a habit, of searching for the common ground where such solutions may be found; the flexibility and discrimination which permit the modification of views and objectives necessary for negotiated settlement; the experience with institutions and procedures for settlement which by design and in operation have almost invariably avoided resort to force.

Perhaps these attributes are not transferable. Perhaps lawyers, or too many lawyers, when shifted to the international sphere, shed their prior training and experience and adopt the attitudes and standards of the soldier and the diplomat for whom, by training and experience, war has always been an alternative to peaceful solution. Can lawyers afford the assumption that the legal profession has no responsibility to offer its traditional talents and skills to the attempt to preserve peace in a world unlikely to survive without it? The American Bar Association, as evidenced by its long and energetic program for World Peace Through Law, obviously has concluded that they cannot. There must be few who will quarrel with that conclusion, or who will doubt that the Athens Conference of lawyers from 105 nations was a manifestation of the highest order of professional responsibility.

RESPONSIBILITIES FOR DEFENSE OF THE LEGAL SYSTEM

Those who administer the legal system are, of course, properly subject to responsible criticism and cannot hope to escape irresponsible criticism. But the criticism which, through ignorance or by design, goes so far as to make unwarranted imputations of improper motives, or to distort the effect or the significance of official acts, may amount to more than an injustice to the individual official or

officials involved. It may undermine public confidence in, and foster misunderstanding and confusion about, the proper functioning of our legal processes. So, also, methods have been left open and must be left open for basic changes in our legal system. But proposals for such changes may be so presented as not to reveal their full significance, or may be inspired by ignorance or misunderstanding of the institutions and processes which they would change. Obviously, a correct public understanding of the issues is desirable.

The legal profession properly claims a special competence in this area. Does that competence carry with it a responsibility to set the record straight? Consider the following situations:

(1) An influential Senator, or a Governor, charges that Supreme Court decisions involving the first amendment rights of Communists or alleged Communists, or decisions involving questions of racial discrimination under the equal protection clause, are influenced by the Justices' sympathy for Communism. The charges are backed by nothing more than the fact that some of the first amendment decisions were favorable to Communists, or ex-Communists or alleged Communists, or that some of the opponents of racial discrimination are alleged to be Communists. Is there a professional obligation to combat distortion by pointing out the discrepancy between the charges and the proof, by explaining the function of the Court when such cases come before it, by appraising the significance of a decision, perhaps by identifying the rational considerations leading to a decision either way? ³¹

(2) A state constitutional amendment is proposed to exclude from the guaranty of jury trial in criminal prosecutions all cases where the charge is one of "subversive activity," a category which may or may not be defined in the proposed amendment. Are the lawyers of the state, as "guardians of due process," obliged to explain that the proposal is contrary to the time-tested traditions of Anglo-Saxon jurisprudence, that on rational grounds it puts the cart before the horse, that it confuses questions of punishing the guilty with questions of proof of guilt?

(3) A few years ago frequent invocations of the privilege against self-incrimination by witnesses called before Congressional committees investigating subversion produced reactions typified by the epithet "fifth-amendment Communist," by aspersions on those who "took the fifth" and by a general hostility to the privilege against self-incrimination. Was it the obligation of lawyers as "guardians of due process" to take on the burden, largely assumed

³¹ Senator Javits and Professor Dorsen thought there was. See Dorsen, "Senator Eastland's Attack on the United States Supreme Court: An Analysis and Response," 111 U. Pa. L. Rev. 693 (1963).

by one member of the profession,³² of attempting to counter this attitude by an exposition of the historical origins and the present function of the privilege as a vital part of our Bill of Rights and of the adversary system of justice?

(4) The General Assembly of the States, a forum of the Council of State Governments, is currently sponsoring amendments to the federal constitution which would: (a) change the amending process to permit the initiation of amendments without any participation by Congress; (b) exclude from the reach of the federal judicial power any controversy concerning state legislative apportionment; (c) create a Court of the Union, composed of the chief justices of the fifty states, to review any Supreme Court decision relating to the rights reserved to the states or to the people by the Constitution. The American Bar Association, speaking for 114,000 of some 250,000 lawyers in the country, is on record as opposing each of these proposals.³³ Is this enough, or are there additional responsibilities to promote and to participate in the "great national debate" on these proposals for which the Chief Justice of the United States has called?

Each of these examples seems to present an instance in which the legal profession, by virtue of its training and experience, has a better understanding of the issues than does most of the general public. From this special competence should follow a special obligation to contribute to the public understanding of the issues.

RESPONSIBILITIES FOR ADEQUATE LEGAL REPRESENTATION

As "guardians of due process," and as a licensed monopoly, lawyers must certainly bear a special responsibility to provide adequate legal representation for all. In part, the problems in this area relate to providing legal assistance in difficult situations. In part they relate to formulating and enforcing measures designed to insure technical competence. And in part they relate to defining and guarding the area in which technical competence is required.

Providing counsel for the needy

As of June 1, 1960, some 200 cities with a combined population of eighty million were served by legal aid offices, and an additional 128 communities with a combined population of twenty-three million were served by volunteer panels of lawyers. Between 400,000 and 450,000 needy cases per year were served by legal aid offices; perhaps another 11,000 were served by volunteer panels.³⁴ The

³² See Griswold, *The Fifth Amendment Today* (1955).

³³ See 49 A.B.A.J. 984, 986-88 (1963).

³⁴ Brownell, *Legal Aid in the United States* 12 (Supp. 1961).

remaining forty-five per cent of the population resides in areas without legal aid service. Whether this data indicates 350,000 to 400,000 needy cases dependent solely upon the donated services of individual lawyers has not been determined.

Although it has been estimated that approximately sixty per cent of those charged with crime cannot afford to employ counsel, only a handful of legal aid offices handle criminal cases. While public defender offices function in about one hundred localities, some forty counties with populations in excess of 400,000 have no such services.³⁵ The assigned counsel system, under which the burden frequently falls on the youngest and least experienced lawyers, is still employed to meet the needs of the indigent accused in areas occupied by over half the total population of the states.³⁶ In many states the appointment of counsel has not been required in non-capital cases and in several it has not been considered authorized.³⁷ The decision of the Supreme Court in *Gideon v. Wainwright*,³⁸ finding such a requirement in the due process clause of the fourteenth amendment, lends constitutional compulsion to the urgency of the problem. The Ford Foundation has recently made grants totaling 2,500,000 dollars for study of and experimentation with methods to improve and extend legal services for indigent persons accused of crime.³⁹

To meet the needs of those of modest means able to make some payment for legal services, about 200 local bar associations maintain a Lawyer Referral Service. A 1961 questionnaire survey to which about half of these services responded indicated that there were about 82,000 applicants and 59,000 referrals during that year.⁴⁰

The bar is justly proud of the growth of the Legal Aid movement and of its role in support of that growth. But that movement has not yet solved the problem and obviously there are formidable obstacles to its success in rural areas. The Dean of the Yale Law School has said that the "provision of legal services to the poor, both in civil and in criminal matters, is in most communities scandalously inadequate. And for that failure we of the Bar are primarily responsible."⁴¹

³⁵ *Id.* at 14; American B. News, March 15, 1963, p. 2.

³⁶ See Special Committee of the Association of the Bar of New York City and the National Legal Aid and Defender Association, *Equal Justice for the Accused* (1959).

³⁷ See Beaney, *The Right to Counsel in American Courts* 84 (1955); "The Right To Counsel: A Symposium," 45 Minn. L. Rev. 693 (1961).

³⁸ 372 U.S. 335 (1963).

³⁹ American B. News, March 15, 1963, p. 1.

⁴⁰ A.B.A. Committee on Lawyer Referral Service, 1961 Survey Results, *The Law. Referral Bull.* (July 15, 1961).

⁴¹ Rostow, *The Lawyer and His Client*, 48 A.B.A.J. 146, 148 (1962).

Legal representation of the unpopular

In the early period of the cold war this problem manifested itself principally as one of obtaining representation for those accused of some connection with the Communist movement. In Cleveland, Denver, Philadelphia and perhaps other cities, the organized bar came forward to provide highly competent counsel for the defense of Smith Act defendants.⁴² But there are less comforting reports. Judge Wyzanski told the first Arden House Conference that when his court called upon four leading law firms to supply counsel in a similar case "none of the men named by any of those four firms was of an age that would entitle him to be invited to this conference."⁴³ A former president of the California bar has reported a series of incidents where lawyers in his state were attacked for the political views of their clients and received inadequate support from the bar.⁴⁴ And a 1959 survey of the students of one law school indicated that, while virtually all believed that a Communist was entitled to counsel when tried on criminal charges or in legislative hearings, almost half did not believe they would take such a case and more than half did not believe their preceptors would do so.⁴⁵

Today there are similarly disturbing reports about the difficulties of obtaining legal representation for those involved in litigation over civil rights in the South. The Department of Justice reports that few white lawyers will represent Negroes in these matters and that there are too few Negro lawyers to handle the load.⁴⁶ These reports are confirmed by Ernest Angell, Chairman of the Board of Directors of the American Civil Liberties Union,⁴⁷ and by the American Bar Association's Committee on the Bill of Rights.⁴⁸

In 1953, at the height of the difficulties about representation of those accused of Communist affiliation, the American Bar Association adopted a resolution reaffirming "the right of defendants to the benefit of assistance of counsel and the duty of the bar to provide such aid even to the most unpopular defendants" and pledging the continued efforts of the Association "to educate the

⁴² See Stone, *Legal Education and Public Responsibility* 151-55 (1959); Goodrich, "The Philadelphia Plan," 20 U. Pitt. L. Rev. 733 (1959); Seymour, "The Bar as Lawmaker," in *Legal Institutions Today and Tomorrow* 184-85 (Paulsen ed. 1959).

⁴³ Joint Committee on Continuing Legal Education, *op. cit. supra* note 3, at 158.

⁴⁴ Ball, "Freedom of the Bar," 32 J.S.B. California 109 (1957).

⁴⁵ Olender, "Let Us Admit Impediments," 20 U. Pitt. L. Rev. 749 (1959).

⁴⁶ N.Y. Times, Oct. 11, 1961, p. 44; Chicago Sun-Times, Nov. 26, 1962, p. 16.

⁴⁷ N.Y. Times, Nov. 26, 1961, p. 8E.

⁴⁸ 87 A.B.A. Rep. 578 (1962); 86 A.B.A. Rep. 474, 476-78 (1961). See also Downs & Goldman, "The Obligation of Lawyers to Represent Unpopular Defendants," 9 How. L.J. 49 (1963).

profession and the public on the rights and duties of a lawyer in representing any client, regardless of the unpopularity of either the client or his cause.”⁴⁹ Obviously, this commitment has not yet been discharged.

Obviously, also, a broader commitment is needed if the legal rights of the unpopular accused are to be protected, as the tragic assassination of President Kennedy demonstrated. The Dallas County Bar Association is to be complimented on its prompt proffer of legal counsel to the accused assassin. But why did not the Dallas Bar Association, or the Texas Bar Association, or the American Bar Association, or any bar association move equally promptly to protest the scandalous performance of the Dallas police department and the news media in generating an atmosphere which most probably would have made a fair trial of the accused impossible regardless of the adequacy of his counsel and which most probably led to his murder instead? The answer apparently is that we are still so unaware of our responsibilities as “guardians of due process” that no bar association was impelled or equipped to act.^{49a}

Adequate competent representation for all

Problems of quantity as well as problems of quality are involved here. As to quantity, new admissions to practice which were eighty-nine per one million of population in 1949,⁵⁰ have declined fairly steadily and were only fifty-eight per one million in 1960.⁵¹ The American Bar Association’s special committee to study current needs in the field of legal education reported in 1961 that, while it had not been able to determine whether there was a present shortage of lawyers, “there is evidence that a shortage will arise unless remedial action is taken.”⁵² Many lawyers probably would disagree with that conclusion, but the problem warrants further study.

As to quality, the problems are manifold. There is evidence that superior college students are attracted in much greater numbers to mathematics, the natural sciences, political science and international affairs than to law.⁵³ In part at least, this is probably due to the inadequate scholarship resources of the law schools, which in 1960 totaled slightly over 2,000,000 dollars and was sufficient to aid slightly over ten percent of the students enrolled in law school. Actually, the situation is worse than the over-all figures indicate.

⁴⁹ 78 A.B.A. Rep. 133 (1953).

^{49a} Since these remarks were delivered, I have been advised by Judge Walter E. Craig that in his then capacity as A.B.A. President he promptly telegraphed protests to Dallas authorities but that these protests were neither heeded nor publicized.

⁵⁰ Smith, “Admissions to the Bar in 1958 and 1959,” 46 A.B.A.J. 1201 (1960).

⁵¹ American B. News, December 15, 1961, p. 4.

⁵² 86 A.B.A. Rep. 703, 706 (1961).

⁵³ *Id.* at 708.

Total resources were divided fifty-fifty between nine schools on the one hand and the one hundred fourteen additional schools reporting on the other hand, and eighty of the latter group of schools had funds ranging "from less than 10,000 dollars per school down to nothing whatsoever in a significant number of them."⁵⁴ This problem is now under consideration by both the American Bar Association's Committee to Study Financing in the Field of Education and its Section of Legal Education.⁵⁵

Other problems go to the nature of legal education. Debate continues between the advocates of more "practical" training in law schools⁵⁶ and those who oppose it,⁵⁷ as well as on the feasibility of prescribing a course of prelegal study.⁵⁸ The financial problems of law schools include the fact that the national median salary of full-time law teachers in 1958 was 8,250 dollars, "not much more than the present starting salary in major law firms in New York City for young men of good scholastic record freshly out of law school."⁵⁹ This situation has been called "a threat to legal education"⁶⁰ and interpreted to mean that "mediocrity is being used to educate the future profession."⁶¹

In 1959, the retiring President of the American Bar Association proclaimed problems of legal education the profession's first responsibility. He urged professional support for further study of prelegal education and for further education for professional responsibility. And he advocated prompt action on a program to provide additional financial support for the law schools.⁶² It is now more than five years later and no action has yet been taken.^{62a}

The question of professional competence reaches, of course, beyond matters of education to those of standards for admission

⁵⁴ *Id.* at 713. See also A.A.L.S., *Anatomy of Modern Legal Education* 110-11 (1961).

⁵⁵ 49 A.B.A.J. 984, 998 (1963); *American B. News*, February 15, 1963, p. 5.

⁵⁶ Cantrall, "Law Schools and the Layman," 38 A.B.A.J. 907 (1952); Frank, "A Plea for Lawyer Schools," 56 *Yale L.J.* 1303 (1947); Frank, "Both Ends Against the Middle," 100 *U. Pa. L. Rev.* 20 (1951).

⁵⁷ Clark, "Practical Legal Training an Illusion," 3 *J. Legal Ed.* 423 (1951); Sturges, "The Profession and Legal Education," 23 *Rocky Mt. L. Rev.* 11 (1950).

⁵⁸ See A.A.L.S., *Pre-Legal Education* (1952); University of Michigan Conference on Legal Education, *The Law Schools Look Ahead* (1959); Vanderbilt, "A Report on Prelegal Education," 25 *N.Y.U.L. Rev.* 199 (1950); Vanderbilt, "Prelegal Education," 17 *B. Exam.* 85, 107 (1948).

⁵⁹ 86 A.B.A. Rep. 703, 712 (1961). See also A.A.L.S., *Anatomy of Modern Legal Education* 264 (1961); Nicholson, *The Law Schools of the United States* (1958).

⁶⁰ Crotty, "A Threat to Legal Education," 6 *J. Legal Ed.* 166 (1953).

⁶¹ Nicholson, *The Law Schools of the United States* 171 (1958).

⁶² Malone, "Our First Responsibility," 45 A.B.A.J. 1023 (1959).

^{62a} In October, 1964, the A.B.A. established a law student loan fund with an initial lending capacity of \$2,000,000. *American B. News*, November 15, 1964, p. 1.

to practice. The improvement of law school education is a poor protection against incompetence if, as is still true in a number of states, including one of our largest, applicants may qualify to take the bar examination without attending law school.⁶³ Then reliance must be placed on the standards imposed for law office study or upon the bar examinations—and where applicants can qualify for bar examinations by taking correspondence courses, the chief reliance must be upon the bar examination. We have little information about the standards applicable to law office study. About the bar examinations we know from the work of the Survey of the Legal Profession that some are good, some are poor, and that there is no uniformity.⁶⁴ However, the American Bar Association and the Association of American Law Schools have approved a code of standards for bar examiners.⁶⁵

Today questions of training and of standards are involved also in a phenomenon which has been with us some time but which grows increasingly important—the matter of specialization in practice and the question of formulating standards for the certification of specialists. The problem was raised and shelved a decade ago,⁶⁶ and it is now raised again.⁶⁷ The debate will doubtless be as heated as it was before;⁶⁸ certainly it will not be permanently ended until the problem is solved.

Unauthorized practice

A necessary concomitant of the establishment of standards for the practice of law is, of course, the prohibition of practice by those who do not meet the standards. The principal difficulty lies in defining the "practice of law" from which the unlicensed are to be excluded. Logically, the definition should not encompass any activity for which licensing standards do not require special qualifications. Only this much can be justified in terms of protecting the public. Beyond this point, an effort to exclude the unlicensed bears

⁶³ A.B.A. Section of Legal Education, Law Schools and Bar Admission Requirements 27-32 (1963).

⁶⁴ See Survey of the Legal Profession, Bar Examinations and Requirements for Admission to the Bar (1952).

⁶⁵ Crotty, "Better Lawyers for Tomorrow: Code of Standards for Bar Examiners," 45 A.B.A.J. 583 (1959).

⁶⁶ See 79 A.B.A. Rep. 403, 450, 582 (1954).

⁶⁷ See Reports of the Special Committee on Recognition and Regulation of Specialization in Law Practice, 87 A.B.A. Rep. 361, 800 (1962).

⁶⁸ See Cantrall, "A Country Lawyer Looks at 'Specialization,'" 48 A.B.A.J. 1117 (1962); Drinker, "Legal Specialists," 41 A.B.A.J. 691 (1955); Joiner, "Specialization in the Law," 39 A.B.A.J. 539 (1953) and 41 A.B.A.J. 1105 (1955); Siddal, "Specialization in the Law," 42 A.B.A.J. 625 (1956); Tweed, "The Changing Practice of Law: The Question of Specialization," 48 A.B.A.J. 423 (1962); Wham, "Specialization in the Law," 42 A.B.A.J. 39 (1956).

the appearance of an effort to extend the monopoly beyond the reasons which inspired its grant.

Unfortunately, efforts to combat "unauthorized practice" not infrequently bear that appearance. Dean Griswold has cautioned that in the approach to the problem of unauthorized practice of tax law the legal profession should remember that "most accountants are much better qualified to handle the ordinary tax matter than are many lawyers."⁶⁹ Attorneys have been repeatedly admonished that efforts to combat unauthorized practice in new and developing areas are not an adequate substitute for developing proficiency in those areas.⁷⁰ The most careful and systematic study of the problem yet made concludes that "the near-monopoly of lawyers in performing difficult legal tasks has become increasingly threatened in some fields by skilled lay specialists such as accountants, estate planners, and title companies" because "these lay specialists are competent, clients are attracted to them, and they often can undercut lawyers' fees. In the future, this threat and encroachment will become greater as an even more complex society produces more skilled lay specialists."⁷¹

To the extent that lawyers seek to prevent others from performing a service attorneys are not qualified to perform, they are in an untenable position for which no public support can be expected. Indeed, public support for a valid position in a given case may be lost if efforts against unauthorized practice in other cases appear to be untenable. And it is the support of the public which the bar must have in the last analysis. It will not do merely to persuade a court in a particular case that its cause is just. Courts, as the citizenry of Arizona recently reminded, may be overruled by constitutional amendments. In that state a decision of its Supreme Court holding that real estate brokers were engaged in illegal practice in drafting and filling out forms⁷² was promptly followed by a constitutional amendment—passed by a four-to-one popular vote—expressly authorizing the brokers to engage in such practices.⁷³

RESPONSIBILITIES FOR PUBLIC LEADERSHIP

Lawyers can and do provide leadership for their fellow citizens in a variety of ways. They may formally assume the duties of

⁶⁹ Griswold, "A Further Look: Lawyers and Accountants," 41 A.B.A.J. 1113 (1955).

⁷⁰ Tweed, *The Changing Practice of Law* 10-11 (1955); Tweed, "The Changing Practice of Law: The Question of Specialization," 48 A.B.A.J. 423 (1962).

⁷¹ Johnstone, "The Unauthorized Practice Controversy, A Struggle Among Power Groups," 4 Kan. L. Rev. 1 (1955).

⁷² *State Bar of Arizona v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 366 P.2d 1 (1961), *on rehearing*, 91 Ariz. 293, 371 P.2d 1020 (1962).

⁷³ Ariz. Const. art. 26, § 1. See Marks, "The Lawyers and the Realtors: Arizona's Experience," 49 A.B.A.J. 139 (1963).

public office. They may become leaders in political organizations or movements, or they may become leaders in a variety of civic organizations and undertakings.

Public office

It is, of course, well known that lawyers preponderate in the Congress, that they constitute the first or second largest occupational group (sometimes being outnumbered by the farmers) in most state legislatures, and that they hold many of the positions, legal and non-legal, elective and appointive, in the executive branches of the states and of the nation. And they occupy all save the lowest rank of judicial offices. The fact that this is so raises a number of questions for the profession.

Lawyers, to be sure, are the dominant occupational group in Congress and the state legislatures, but are they, by and large, the lawyers we would like to think of as the better lawyers, the stars of our profession? To be local about it, how many Whitney Seymours, Louis Loeb's, and Harry Tweeds do you find in the typical state legislatures? . . . I ask the same question about our judges. Our Traynors, Fulds, Breitels and Schaefer's would be stars in any league, but how many such genuinely superior men are there on appellate courts and trial courts of general jurisdiction, and what can we do to see that the bar offers not of its average but of its best — and that the offer is taken up by those in political power?⁷⁴

Apart from the judiciary, do lawyers have any special competence for public office? Some argue that they do—that the attorneys' training in analysis, flexibility of mind, diversity of experience and professional skills are extremely valuable attributes which make them well qualified for public leadership.⁷⁵ Others have disagreed:

The answer is obviously "yes" whenever a technical knowledge of the law is involved. But in regard to other qualifications, the lawyer is neither specifically trained for leadership nor is leadership training or ability lacking in many other occupations. It might even be said that some of the traditional skills of the lawyer, such as public speaking, have become less common among members of the bar along with increasing specialization. Furthermore, the great complexity of community life requires a wide variety of experts in the formulation and administration of policies. Technical knowledge other than the law is needed. One might conclude that the greater specialization in law practice and the more extensive division of labor in the community both tend to make the

⁷⁴ H. W. Jones, "Comment," in *Legal Institutions Today and Tomorrow* 197-98 (Paulsen ed. 1959); "It is often heard around statehouses that on the whole lawyer-legislators are below par as lawyers go." Derge, *The Lawyer as Decision-Maker in the American State Legislature*, 21 *J. Politics* 408, 412 (1959).

⁷⁵ See, e.g., Nelson, *Developing Responsible Public Leaders* 49-50 (1962).

legal specialist less specifically fitted for positions of *general* leadership. There is no reason why a legal specialist should make a better "generalist" than many other specialists.⁷⁶

Is it true that lawyers predominate in public office not because of special competence, but because "the law is the profession most compatible with a political career,"⁷⁷ or because political candidacy is "a traditional form of professional advertising"?⁷⁸

If, for whatever reason, lawyers are to continue to occupy numerous public offices, does this call for re-examination of legal education to take account of the demands which will be made upon them? Some have thought so,⁷⁹ but there is little indication that their views have yet had much impact on legal education. At the very least, there seems to be need for education on problems of conflict of interest as they will appear for the lawyer while he is in and after he leaves public office.⁸⁰

Political leadership

The Report of the Joint Conference on Professional Responsibility claimed for the lawyer special competence to improve public discussion of political and economic issues by defining objectives and by designing frameworks for achieving those objectives. It also urged that law be "so practiced that the lawyer remains free to make up his own mind how he will vote, what causes he will support, what economic and political philosophy he will espouse."

Unfortunately, law is not always so practiced. As the late Arthur Vanderbilt described it:

The leaders of many industries deem it necessary to keep out of politics, officially at any rate, and they often expect their lawyers to do so too. The attitude of many clients, particularly in the larger communities, toward the politics of their attorneys has had its baleful influence. They prefer their lawyers not to be active politically, but at the same time to have political contacts if they should be needed in furtherance of their clients' affairs. They look with favor, therefore, on law firms made up of members of both

⁷⁶ Wood & Wardell, "The Lawyer and Community Leadership," 9 J. Legal Ed. 162, 171 (1956).

⁷⁷ Schlesinger, "Lawyers and American Politics: A Clarified View," 1 Midwest J. Pol. Sci. 26, 27 (1957).

⁷⁸ Blaustein & Porter, *The American Lawyer* 98 (1954).

⁷⁹ See Goodman & Rabinowitz, "Lawyer Opinion on Legal Education," 64 Yale L.J. 537 (1955); Lasswell & McDougal, "Legal Education and Public Policy: Professional Training in the Public Interest," 52 Yale L.J. 203 (1943); McDougal, "The Law School of the Future; From Legal Realism to Policy Science in the World Community," 56 Yale L.J. 1345 (1947); Sturges, "The Profession and Legal Education," 23 Rocky Mt. L. Rev. 11 (1940).

⁸⁰ See Conflict of Interest and Federal Service (1960), a report of a special committee of The Association of the Bar of the City of New York.

political parties so that the partnership may have a foot in each camp. Not only the ethics but the effectiveness of this point of view may be questioned, but the fact that it represents a widespread opinion of clients in selecting lawyers cannot be gainsaid.⁸¹

To this it has been added that the lawyer's

participation in local political affairs evinces lack of understanding, callous indifference, or sometimes hostility. With few exceptions, lawyers have not busied themselves with the functioning of local government. Of those legal brethren who have, a fraction have done so unselfishly and as a civic duty. The great mass of lawyers supinely accept evil political conditions in their locality or, worse, abet them. The "political lawyer," the lobbyist or the fixer is the common conception of a lawyer in local politics.⁸²

These are the observations of respected members of the legal profession. They raise serious questions of professional default if there is a professional responsibility in this area.

Civic leadership

Not all public leadership is "political" in the sense that it relates to political parties and their campaigns and candidates. Much of community life consists of and is affected by nonpolitical organizations and movements. To the extent that the lawyer is qualified and responsible for political leadership he may be similarly qualified and responsible for nonpolitical civic leadership. Certainly it is the practice of the leaders of our profession to exhort the neophytes to such leadership. To what extent do lawyers provide such leadership? There are no comprehensive studies, but the results of a couple of samples give some indication.

A decade ago, when Elmira, New York, was a city of about 50,000 with about eighty practicing attorneys, a survey revealed that the lawyers, on the average, were active in five organizations, four times the average for the entire adult population and twice the average for adult males who had attended college. The lawyers themselves viewed their participation as valuable to their professional careers in terms of building an acquaintanceship, providing an opportunity to demonstrate ability, enhancing reputation and increasing opportunities for client contacts. But they also felt that the community expected such participation from them and they expected it of each other—there was general disapproval of the lawyer who did not do his share.⁸³

⁸¹ Vanderbilt, *Men and Measures in the Law* 46 (1959).

⁸² Seasongood, "Public Service by Lawyers in Local Government," 2 *Syracuse L. Rev.* 210, 211 (1951).

⁸³ Matthews, *The Lawyer as a Community Leader: One Dimension of a Professional Role*, 1952 (unpublished Ph.D. thesis, Cornell University).

In 1956, interviews of 215 or forty per cent of the lawyers in a large southern city, and fifty-one of the fifty-three lawyers in a small New England town produced less encouraging results. Counting membership "in virtually any type of community organizations—including religious, philanthropic, social service, purely social and recreational, professional, and cultural associations," about half of the lawyers were members of five or fewer nonpolitical organizations and almost one-third of them were members of fewer than three. One-third of them had never held an office in any such organization. Only seventeen per cent of them believed that they should be active in community affairs or politics and forty-seven per cent were opposed to "law school training on broad social questions in preparation for policy-making positions." Twenty-two per cent said they participated in politics and eleven per cent in other community activities only to further their practices. Thirteen per cent said they dropped their community activities after their practices were established. Six per cent admitted that their community activity was forced upon them by civic organizations.⁸⁴ Here again, if there is a professional responsibility, the bar may be in default—or at least in need of improvement.

RESPONSIBILITIES TO THE PROFESSION

In a sense all other areas of professional responsibility previously suggested in this paper might be viewed as responsibilities to the profession, although larger responsibilities are also involved. But there are at least two matters which may be described as uniquely the lawyer's responsibilities to his profession.

Canons of ethics

The Canons of Professional Ethics adopted by the American Bar Association in 1908, as subsequently amended, are officially adopted as standards for professional performance in some states. Where not so adopted they are nonetheless of great influence in disciplinary matters. For all practicing lawyers they are a guide to proper professional conduct.

There is some feeling that these Canons are in need of revision and modernizing. In large part, they seem applicable only to the trial of cases in court—perhaps a reflection of the date of their origin. Where they do apply, it is not clear that they in all respects represent the professional consensus as to propriety.⁸⁵ A special committee of the American Bar Foundation in 1958 reported that the Canons were weakened by an intermixture of statements of

⁸⁴ See Wood & Wardell, *supra* note 76.

⁸⁵ See McCracken, "Report on Observance by the Bar of Stated Professional Standards," 37 Va. L. Rev. 399 (1951).

abstract ideals with standards of conduct, that insofar as they constituted standards of conduct there were serious omissions on modern problems of law practice, and that they were not well adapted to use as standards for the basis of discipline.⁸⁶ Whether or to what extent these complaints are justified must be a matter within the responsibility of a profession which so widely recognizes the Canons as authoritative standards of conduct.^{86a}

Bar associations

If a profession is to discharge its other responsibilities, it must be organized. Only through organization is there an opportunity for collective judgment and for implementation of that judgment.

After rapid gains in membership in the last few years, the American Bar Association has now enrolled 114,000, or about forty-five per cent, of some 250,000 practicing lawyers. There is no comprehensive information as to membership in state and local bar associations save that it is one hundred per cent in those twenty-six state bar associations which are integrated. Even where the bar is integrated, formal membership is one thing, and active, intelligent, participating membership is another. It is obvious that the profession still needs to be concerned about its organization. And to the extent that the integrated bar seemed to offer a solution, *Lathrop v. Donahue*⁸⁷ raises a host of new problems of professional concern.⁸⁸

CONCLUSION

The areas outlined seem to me to constitute the minimal, the indispensable, ingredients of any modern concept of professional responsibility. Some may disagree, and they may be right: no better warrant is claimed for these remarks than that they represent the views of one who has worried considerably about the responsibilities of the legal profession. But before anyone concludes finally that he must disagree with what has been said, I urge him to ask himself two questions. Are the questions raised here deserving of further public attention? If so, who are better qualified to bring them to public attention and to insure their intelligent consideration than the lawyers?

⁸⁶ Report of the Special Committee of the American Bar Foundation on Canons of Ethics, June 30, 1958.

^{86a} In August, 1964, the A.B.A. created a special committee to evaluate and recommend changes in the Canons. American B. News, September 15, 1964, p. 1.

⁸⁷ 367 U.S. 820 (1961).

⁸⁸ See also two mimeographed reports of Columbia University's Bureau of Applied Social Research: Glaser, "The Organization of the Integrated Bar" (1960) and Glaser, "The Debate Over the Integrated Bar" (1960).